

**TENNESSEE BOARD OF PHARMACY  
JANUARY 21 - 22, 2003  
ROOM 160 - DAVY CROCKETT TOWER  
NASHVILLE, TENNESSEE**

**BOARD MEMBERS PRESENT:**

Forrest Parmley, President  
Robert Shutt, Vice President  
Barbara McAndrew, Public Member  
Administrator  
Reggie Dilliard, Member  
Investigator  
Julie Frazier, Member  
Investigator  
Sheila Mitchell, Member  
Alan Corley, Member  
Investigator

**STAFF PRESENT:**

Kendall Lynch, Director  
Alison Zane, Legal Counsel  
Martha Agee, Board  
John Beauregard, Pharmacist  
Terrence Cannada, Pharmacist  
Harry Fuqua, Pharmacist Investigator  
Richard Hadden, Pharmacist  
Ralph Staton, Pharmacist Investigator

The Tennessee Board of Pharmacy convened on Tuesday, January 21, 2003, in Room 160 of the Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee. A quorum of the members being present, the meeting was called to order at 9:00 a.m. CST by Dr. Forrest Parmley, President.

Director Kendall Lynch introduced to the board, Mrs. Patricia Little, who will begin employment with the Pharmacy Board on February 1, 2003. President Forrest Parmley, on behalf of the members, welcomed Mrs. Little. Director Kendall Lynch on behalf of the staff, congratulated Dr. Forrest Parmley on the status of President.

**RECIPROCAL EXAMINATION**

The Jurisprudence Examination was administered to sixteen (16) applicants, beginning at 10:00a.m. CST on Tuesday, January 21, 2003. The examination was administered by Pharmacy Board Investigators. All of the applicants, with the exception of one (1) applicant, successfully completed the examination, were interviewed by the Board and

approved for licensure

### **SCORE TRANSFER/NAPLEX JURISPRUDENCE EXAMINATION**

The Jurisprudence Examination was administered to six (6) Score Transfer examinees, five (5) NAPLEX examinees, and two (2) Reinstatement examinees in Room 640 of the Davy Crockett Tower at 10:00 a.m. CST on Tuesday, January 21, 2003. The examination was administered by the Pharmacy Board Investigators. All of the applicants successfully completed the Jurisprudence Exam.

### **APPROVAL OF THE MINUTES**

The **minutes of the November 19 – 20, 2002** board meeting were deferred until the March 18 -9, 2003 board meeting.

### **TINA POSEY, DPH #10977 – REQUEST FOR REINSTATEMENT OF LICENSE MT. JULIET, TN**

Dr. Tina Posey appeared before the Board with advocates Dr. Mike Matheny and Dr. Cliff Weiss with TPRN. Director Kendall Lynch advised the Board that he received a telephone call from Walgreen's Loss Prevention stating Dr. Posey had been arrested and charged with possession of controlled substances. Dr. Posey was terminated by her employer. Dr. Posey contacted the office and Director Lynch advised her to contact TPRN, which she did the first of July, 2002.

Dr. Posey shared her history of drug abuse with the Board up until her arrest in Wilson County in June, 2002. Dr. Posey stated she entered Lakeside in July, 2002 and then participated in a program at Cresthaven in Memphis. Dr. Posey was discharged on October 8, 2002. Dr. Posey stated she has completed the 90/90 meetings and has

obtained advocacy from TPRN. Dr. Cliff Weiss and Dr. Mike Matheny informed the Board that Dr. Posey is compliant with the TPRN requirements. Dr. Posey stated she is on probation until September 2004 with the Wilson County Courts and upon successful completion of the probationary period, the conviction will be expunged. After Board discussion, Dr. Robert Shutt motioned:

1. Respondent does hereby agree to the reinstatement of license number **#10977** with the following probationary conditions. Said probation shall remain in effect for a period of five (5) years:

(a) The Respondent shall completely abstain from the consumption of alcohol and controlled substances, except as prescribed by a duly licensed practitioner for a legitimate purpose.

(b) The Respondent shall consume no medications unless they are prescribed by his primary physician, Aileen Tucker, MD. The Respondent shall immediately notify the Board office of the name of his primary physician each time the Respondent changes primary physicians.

(c) The Respondent shall destroy any unused controlled substances prescribed under the provisions of subsection (b) no later than thirty (30) days following the completion of the prescribed course of treatment.

(d) The Respondent shall report to the Board, in writing, the ingestion

of any and all legend drugs or controlled substances (a copy of the prescription will satisfy the requirement).

(e) The Respondent shall be subject to perpetual, random sampling of urine, blood or bodily tissues, at his own expense, by agents of the Board.

(f) Should any sampling indicate the presence of drugs for which the Respondent does not have a valid prescription, a show cause order will be issued to determine why the probation and the Respondent's license should not be immediately revoked.

(g) The Respondent shall comply with all the terms and conditions of the extended aftercare contract he entered into with Tennessee Pharmacist Recovery Network.

Respondent shall return a copy of said contract with this Consent Order to the Board office.

(h) The Respondent will not serve as pharmacist in charge for a period of three (3) years, however, after a period of two (2) years, may petition the Board for a modification of this Order to remove the restrictions upon a show of good cause.

(i) If the license has been inactive, delinquent, suspended or revoked:

① Less than one (1) year, the pharmacist shall:

1. Provide written notice requesting an active license.

2. Satisfy all past due continuing pharmaceutical education.
3. Pay all cumulative license renewal fees and any applicable penalties.

Dr. Alan Corley seconded the motion. All were in favor and the motion carried.

**KEVIN BROOKS, #11666 – REQUEST FOR REINSTATEMENT OF LICENSE  
MT. PLEASANT, TN**

Dr. Kevin Brooks appeared before the Board along with his wife, Sarah and a friend, Randall Jean to request reinstatement of his pharmacist license. Advocating on his behalf were Dr. Mike Matheny and Dr. Cliff Weiss with TPRN. Director Kendall Lynch stated Dr. Brooks was fired by his employer for shortages of controlled substances. Dr. Brooks admitted to the theft. Dr. Brooks was referred to an EAP program and then to Charter Lakeside for an evaluation. Dr. Brooks entered Charter Lakeside on September 3, 2002 and released in October, 2002. Dr. Brooks stated he had made restitution with his former employer. After Board discussion, Dr. Julie Frazier motioned:

1. Respondent does hereby agree to the reinstatement of license number **#11666** with the following probationary conditions. Said probation shall remain in effect for a period of five (5) years:

(a) The Respondent shall completely abstain from the consumption of alcohol and controlled substances, except as prescribed by a duly licensed practitioner for a legitimate purpose.

(b) The Respondent shall consume no medications unless they are

prescribed by his primary physician, John Brown, MD. The Respondent shall immediately notify the Board office of the name of his primary physician each time the Respondent changes primary physicians.

(c) The Respondent shall destroy any unused controlled substances prescribed under the provisions of subsection (b) no later than thirty (30) days following the completion of the prescribed course of treatment.

(d) The Respondent shall report to the Board, in writing, the ingestion of any and all legend drugs or controlled substances (a copy of the prescription will satisfy the requirement).

(e) The Respondent shall be subject to perpetual, random sampling of urine, blood or bodily tissues, at his own expense, by agents of the Board.

(f) Should any sampling indicate the presence of drugs for which the Respondent does not have a valid prescription, a show cause order will be issued to determine why the probation and the Respondent's license should not be immediately revoked.

(g) The Respondent shall comply with all the terms and conditions of the extended aftercare contract he entered into with Tennessee Pharmacist Recovery Network.

Respondent shall return a copy of said contract with this Consent Order to the Board office.

(h) The Respondent will not serve as pharmacist in charge for a period of three (3) years, however, after a period of two (2) years, may petition the Board for a modification of this Order to remove the restrictions upon a show of good cause.

(i) If the license has been inactive, delinquent, suspended or revoked:

①Less than one (1) year, the pharmacist shall:

1. Provide written notice requesting an active license.
2. Satisfy all past due continuing pharmaceutical education.
3. Pay all cumulative license renewal fees and any applicable penalties.

Dr. Robert Shutt seconded the motion. All were in favor and the motion carried.

#### **CONSENT ORDERS**

**MARTHA BRYANT, DPH**  
3500 Wedgewood Drive  
Morristown, TN 37814

**JAMES CATRON, DPH**  
3341 Spring Creek Drive  
Morristown, TN 37814

**DONALD EVANS, DPH**  
201 Richard Jones Road #-14  
Nashville, TN 37215

**CHARLES MURPHY, DPH**  
505-A Swan Pond Circle  
Harriman, TN 37748

**BUFORD NEELY, DPH**  
15051 North Big Hill Road

**Gulfport, MS 39503**

Ms. Alison Zane, legal counsel, presented the above referenced Consent Orders for Reinstatement of License. Dr. Alan Corley motioned to **accept** the Consent Orders; seconded by Mrs. Barbara McAndrew. All were in favor and the motion carried.

**HOWARD A. RAINWATER, DPH**  
**108 Julia Street**  
**Sterlington, LA 71280**

Legal counsel, Ms. Alison Zane, stated Dr. Howard Rainwater executed a Consent Order from the Louisiana Board of Pharmacy on August 14, 2000 in which he agreed to the suspension of his license to engage in the practice of pharmacy for five (5) years from August 23, 2000 to August 23, 2005. The Consent Order presented mirrored the Louisiana Board of Pharmacy and in the event Dr. Rainwater wishes to reinstate his Tennessee license, he must appear before the Board and must enroll in the TPRN program. Dr. Robert Shutt motioned to **approve** the Consent Order; seconded by Dr. Sheila Mitchell. All were in favor and the motion carried.

**KEVIN HARTMAN, DPH**  
**5324 Fredericksburg Way W.**  
**Brentwood, TN 37037**

Ms. Alison Zane, legal counsel, presented a Consent Order for surrender of the license of Dr. Kevin Hartman for chemical dependency. Dr. Reggie Dilliard motioned to **accept** the Consent Order; seconded by Dr. Sheila Mitchell. All were in favor and the motion carried.



**MELISSA SHERER, DPH**  
**670 Highway 195**  
**Jasper, AL 35503**

Ms. Alison Zane, legal counsel, presented a Consent Order whereas Dr. Melissa Sherer entered a plea of guilty on May 14, 2001, in the Circuit Court of Walker County, Alabama to one count of unlawful possession of controlled substances and was sentenced to probation for a term of eight years. Dr. Sherer has completed her criminal probation. The Alabama State Board of Pharmacy suspended Dr. Sherer's license to practice pharmacy in Alabama for a period of fifteen (15) years, the suspension to revert to probation after six (6) months. The Tennessee Board of Pharmacy will allow Dr. Sherer's application for licensure to be considered. Should a license be issued by the Board, Dr. Sherer's license will be placed on probation for a period of fifteen (15) years. Dr. Reggie Dilliard motioned to **accept** the Consent Order, seconded by Dr. Julie Frazier. All were in favor and the motion carried.

**REV. JAMES A. SKELTON, DPH**  
**4895 Highway 64E**  
**Wartrace, TN 37183**

Legal counsel, Ms. Alison Zane, presented a Modification of Consent Order for Rev. Andy Skelton to remove the terms and conditions of his probation, which he entered into on October 4, 1999. Dr. Alan Corley motioned to **accept** the Consent Order; seconded by Dr. Sheila Mitchell. All were in favor and the motion carried.

**MARIE M. STEVENS, DPH**  
**9234 Fletcher Trail**  
**Lakeland, TN 38002**

A Consent Order was presented by legal counsel, Ms. Alison Zane, whereas Dr. Marie

Stevens was in violation of Rule 1140-3-.01 (1) (a) relevant to counseling. A civil penalty of \$100 was assessed. Dr. Julie Frazier motioned to **accept** the Consent Order; seconded by Dr. Reggie Dilliard. All were in favor and the motion carried.

**SUPER DRUGS**

**License #1431**

**13092 N. Main Street  
Somerville, TN 38068; and**

**CHARNELL W. MIDDLECOFF, III, DPH**

**145 Country Club Road  
Somerville, TN 38068**

Legal counsel, Ms. Alison Zane, presented a Consent Order whereas a violation of Rule 1140-3-.01 (1) (f) was observed by the pharmacy investigator. A civil penalty of \$500 was assessed Super Drugs and \$100 civil penalty was assessed to Dr. Charnell Middlecoff. Dr. Julie Frazier motioned to **accept** the Consent Order; seconded by Dr. Sheila Mitchell. All were in favor and the motion carried.

**WALGREEN'S PHARMACY #3699**

**5115 Quince Road  
Memphis, TN 38117**

Legal counsel, Ms. Alison Zane, presented a Consent Order whereas Walgreen's Pharmacy #3699 was observed by a pharmacy investigator to be in violation of Rule 1140-2-.02 (5) relevant to the pharmacy technician ratio. Walgreen's Pharmacy #3699 was assessed a civil penalty of \$250. Dr. Julie Frazier motioned to **accept** the Consent Order; seconded by Dr. Sheila Mitchell. All were in favor and the motion carried.

**VILLAGE DRUGS**

**License #5**

**100 West Knight Street  
Portland, TN 37148**

Ms. Alison Zane, legal counsel for the board, presented a Consent Order whereas a violation of Rule 1140-2-.01 (1) occurred due to a misfill. Village Drugs was assessed a civil penalty of \$1,000. Dr. Reggie Dilliard motioned to **accept** the Consent Order; seconded by Dr. Alan Corley. All were in favor and the motion carried.

**LESTER S. BLEVINS, DPH**  
**100 West Knight Street**  
**Portland, TN 37148**

Ms. Alison Zane, legal counsel for the board, presented a Consent Order whereas a violation of Rule 1140-2-.01 (1) occurred due to a misfill. Dr. Lester Blevins was assessed a civil penalty of \$500. Dr. Sheila Mitchell motioned to **accept** the Consent Order; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

## **WAIVERS**

**MONICA JONES, DPH**  
**AMMED HOME CARE PHARMACY**  
P. O. Box 307  
Parsons, TN 38363

Dr. Monica Jones is requesting a waiver of Rule 1140-1-.12 (3) (e) relevant to the hot and cold running water in the prescription department of a pharmacy practice site. AmMed Home Care Pharmacy, a closed mail order pharmacy for diabetic drugs, will be located within the confines of the AmPharm pharmacy building and the existing sinks are within 18 feet of the proposed room for AmMed. Dr. Alan Corley motioned to **grant the waiver for twelve (12) months and report their status to the board at that time**

**and to limit the supply to diabetic supplies.** Dr. Reggie Dilliard seconded the motion. All were in favor and the motion carried.

**WILLIAM B. CLEMENT, DPH**  
**HOME REHAB & MOBILITY, INC.**  
108 Highway 70 East  
Dickson, TN 37055

Dr. William B. Clement is requesting a waiver of Rule 1140-3-.14 (12) relevant to being the pharmacist in charge at more than one (1) location. Dr. Clement is currently the PIC at Home Rehab and Mobility, Inc. and is requesting to be PIC at DME Pharmacy. Both of the pharmacies are closed entities. Dr. Robert Shutt motioned to **accept** the waiver request; seconded by Dr. Alan Corley. All were in favor and the motion carried.

**RHONDA GEESLIN, DPH**  
3851 S. Parklane  
Springfield, MO 65807

Dr. Rhonda Geeslin is requesting a waiver of Rule 1140-1-.07 (3) (b) (3) (4) (5) relevant to restoring her expired license to an active status. In July, 1998, the Board implemented a rule change pertaining to the “inactive” status and on August 10, 1998, Dr. Rhonda Geeslin submitted licensing fees and continuing education to renew her license. Since the license did not expire until May 31, 1999, a Claim for Refund was initiated. At the time of renewal, Dr. Geeslin did not submit the appropriate fees and the license was placed in expired status. Dr. Robert Shutt motioned to **accept** the waiver request; seconded by Dr. Sheila Mitchell. All were in favor and the motion carried.

**JOSEPH MURPHY, DPH**  
333 Appleton Road  
Five Points, TN 38457

Dr. Joseph Murphy is requesting a waiver of Rule 1140-1-.07 (3) (c) (3) relevant to the NAPLEX exam. Dr. Murphy did not receive the inactive/active letter due to the rule change which became effective July, 1998. Dr. Alan Corley motioned to **grant** the waiver; seconded by Dr. Robert Shutt. All were in favor and the motion carried.

**DUSTIN MABE, DPH**  
326 Ambrosia Drive  
Kingsport, TN 37664

Dr. Dustin Mabe is requesting an extension of time in which to complete the NAPLEX Score Transfer process from Virginia to Tennessee, as he has been called to active military duty. Dr. Mabe took the NAPLEX exam on July 6, 2002 and is allowed twelve (12) months in which to obtain licensure in Tennessee. Dr. Robert Shutt motioned **to grant an extension of time to July 6, 2004**; seconded by Dr. Alan Corley. All were in favor and the motion carried.

**BILLY RAY COLLINS, DPH**  
**MORRISTOWN, TN**

Ms. Alison Zane advised the Board at the November 19- 20, 2002 board meeting, Mr. James Bell, Dr. Collins' attorney, petitioned the Board for a Continuance of the formal hearing to be conducted in December, 2002. Ms. Zane stated an administrative law judge was not available. Ms. Zane stated Administrative Law Judge Sullivan will meet via teleconference with Mr. Bell.

## **LEGAL REPORT/COMPLAINTS**

### **1. Case No.: L02-PHR-RBS-200210092**

The complaint alleges that the pharmacist has been charged with six (6) counts of Possession of a Controlled Substance with the intent to Manufacture, Sell or

Deliver such controlled substances and twenty-four (24) counts of Possession of Legend Drugs without a Prescription. The Pharmacist has not been convicted of any of the charges and the case, which includes all of the aforementioned charges, has been continued until October 23, 2003; the Pharmacist was released on her own recognizance. On a 911 call from the pharmacist's home, alleging domestic abuse, the police uncovered three (3) ziplock baggies, unmarked pill bottles and daily dosage containers full of over five hundred (500) pills of controlled substances and antibiotics.

**Recommendation: Consent Order for the suspension of the Respondent's license until such time that the Respondent completes a substances abuse evaluation by a Board-approved facility. Upon the completion of the evaluation, whether or not it indicates a substance abuse problem, the Respondent shall personally appear before the Board to request the reinstatement of her license.**

Dr. Alan Corley motioned to **accept counsel's recommendation**; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

**2. Case No.: L02-PHR-RBS-200100180**

The Complainant alleges that she mistakenly received Lotensin ten (10) mg, instead of her prescription for Lipitor ten (10) mg. The Complainant consumed the medication before the error was detected and experienced blood pressure problems without any permanent or long-term disabilities resulting from the medication error. Based on the complaint and the response, it is unclear as to how much medication the Complainant consumed. The Complainant commenced a civil suit which resulted in a \$5,000.00 settlement.

*Previous complaints:*

*DPh: None.*

*Pharmacy: None.*

**Recommendation: Letter of Warning**

Dr. Alan Corley motioned to **accept the Letter of Warning**; seconded by Dr. Robert Shutt. All were in favor and the motion carried.

**3. Case No.: L02-PHR-RBS-200211145**

The Complainant is a physician who received a clinical management letter from the Pharmacy Benefits Manager inquiring about the validity of certain prescriptions, indicating that the medications prescribed may be used for other than therapeutic means. The Complainant claims that she does not write the prescriptions noted by the Pharmacy Benefits Manager and does not know the patient for whom the prescriptions were written. Our investigators obtained

records from the pharmacy which indicate that another physician did, in fact, write the prescriptions at issue and that the pharmacy did type in the correct DEA number for the prescribing physician. The investigator further determined that the pharmacy records do not appear to have been altered and that there is no explanation as to how the Complainant's name is associated with the patient or how it appeared on the patient's insurance claim.

**Recommendation: Dismissal**

Dr. Robert Shutt motioned to **accept counsel's recommendation**; seconded by Dr. Sheila Mitchell. All were in favor and the motion carried.

**4. Case No.: L02-PHR-RBS-200211512**

The Complainant alleges that she has been experiencing difficulty obtaining refills for her medicine. On the occasion which is the subject of this complaint, the Complainant alleges that she was unable to obtain a refill for Celebrex until her physician consented to the refill. The Complainant returned the next day after the DPh had an opportunity to consult with her physician and she was told by the pharmacy technician that the script was not ready. The Complainant became agitated and she and the DPh got into a heated verbal exchange. After the Complainant left the pharmacy, the DPh checked the "prescription hold box" and found the Complainant's prescription. The pharmacy technician had never looked for the script as directed. Subsequently, the technician was reassigned to another store because of this incident.

*Previous Complaints:*

*DPh: None.*

*Pharmacy: None.*

**Recommendation: Dismissal**

Dr. Julie Frazier motioned to **accept counsel's recommendation**; seconded by Dr. Robert Shutt. All were in favor and the motion carried.

**5. Case No.: L02-PHR-RBS-200208432**

The complaint alleges that the DPh was charged with three (3) counts of illegal possession of prescription legend drugs and possession of a controlled substance. The DPh pled guilty to the charge of illegal possession of a prescription legend drug for adding a refill of an Allegra prescription without the physician's authorization for his wife; the DPh did not actually refill the prescription. The DPh was placed on probation for a period of one (1) year from July 12, 2002 to July 12, 2003 and was directed to pay fines and Court costs.

*Previous Complaints:*

*DPh: None.*

**Recommendation: Letter of Warning**

Dr. Alan Corley motioned to **accept the Letter of Warning**; seconded by Dr. Sheila Mitchell. All were in favor and the motion carried.

**6. Case No.: L02-PHR-RBS-200209861**

The complaint alleges that the DPh failed to record co-pays in the amount of \$628.04 and \$2,846.37 in paid prescriptions. The DPh's employment was terminated from the pharmacy for taking prescriptions for himself and his family from the store without paying for them. The pharmacy is pursuing restitution in lieu of criminal charges. The pharmacist in charge reviewed the DPh's profile which showed numerous early refills, one (1) quantity misfill and seven (7) Schedule II prescriptions missing from the sequential file. The DPh responded that he always used his personal credit card for his own prescriptions. The DPh suffers from a chronic pain disorder that he controls by taking opiates. The DPh went to a treatment center for a drug addiction evaluation and was released without a finding of an addiction.

*Previous Complaints:*

*DPh: None.*

**Recommendation: Consent Order with a two (2) year probation term with the following conditions: (a). DPh not be allowed to fill his own prescriptions; (b). During the period of probation, the DPh not be allowed to be PIC; and (c). The pharmacy shall submit quarterly reports on the status of the DPh.**

Dr. Alan Corley motioned to **accept counsel's recommendation with addition to notify employer of their chronic pain treatment**. Dr. Julie Frazier seconded the motion. All were in favor and the motion carried.

**7. Case No.: L02-PHR-RBS-200210666**

The complaint alleges that an investigator observed a violation of the pharmacist to pharmacy technician ratio, where there was one (1) pharmacist, three (3) non-certified technicians and one (1) certified technician working at the same time. One (1) of the non-certified technicians was drifting between the duties of cashier and technician functions of deleting prescriptions that had not been picked up by canceling the prescription on the patient profile and then putting the drugs back on the shelf. This activity would fall under the language of Rule 1140-2-.02(2)(d) which states that a pharmacy technician may "obtain and enter patient or medical or prescription order data into the patient information system." The DPh



responded that there was an imbalance in the ratio because one (1) of the technicians was on the phone with an insurance company when the replacement technician arrived. But for this phone call, they would have been in the proper ratio of 3:1.

*Previous Complaints:*

*Pharmacy: None.*

*DPh: None.*

**Recommendation: Letter of Instruction**

Dr. Alan Corley motioned to **accept counsel's recommendation**; seconded by Mrs., Barbara McAndrew. All were in favor and the motion carried.

**8. Case No.: L02-PHR-RBS-200210548**

The Complainant is the parent of the patient; the patient is a child. The PIC filled the prescription for one (1) ounce of Zantac liquid. The instructions on the bottle mistakenly stated that the patient should receive a 0.5 teaspoonful twice daily. Instead, the label should have stated 0.5 ml twice daily one (1) hour before or one (1) hour after feeding. The child did consume the medication at the wrong dosage, but did not suffer any permanent damages or disabilities. The PIC realized the error when the Complainant came back for a refill too early. The PIC states that he explained the correct dosage to the Complainant, refilled the prescription at no charge and gave the Complainant a syringe to properly measure the correct amount of the medicine. It is explained that the reason for the error is that the pharmacy has a computer program that translates "0.5 ml" to "1/2 teaspoon".

*Previous complaints:*

*DPh: None.*

*Pharmacy: None.*

**Recommendation: Letter of Warning with instruction to the PIC to review all computer abbreviations and to instruct the other pharmacists and pharmacy technicians to check the instructions on the bottle with the instructions on the prescriptions.**

Dr. Alan Corley motioned to **accept counsel's recommendation** plus include in the letter that error shortages should have been caught in the counseling.

**9. Case No.: L02-PHR-RBS-200210550**

The Complainant alleges that she went to the pharmacy to have a prescription for prenatal vitamins refilled and she received a bottle without a label on it. The Complainant called the pharmacy and the pharmacy was able to verify the

contents of the bottle over the phone as being the prenatal vitamins. The next day, the Complainant brought the bottle back to the pharmacy to show them that there was no label on the bottle. The Complainant wouldn't allow the pharmacist (DPh 2) to examine the bottle and claimed that the pharmacist then threw a new bottle of vitamins at her. The PIC admits that the Complainant was given an unlabeled bottle of prenatal vitamins, but denies throwing a new prescription at her. The Complainant was given a new labeled bottle of prenatal vitamins.

*Previous Complaints:*

*Pharmacy: One (6/98. counseling)*

*PIC: None.*

*DPh 1: None.*

*DPh 2: One (7/97, misfill, reg letter)*

**Recommendation: Letter of Warning**

Dr. Sheila Mitchell motioned to **accept counsel's recommendation**; seconded by Dr. Alan Corley. All were in favor and the motion carried.

**10. Case No.: L02-PHR-RBS-20020552**

The Complainant alleges that the PIC failed to fill a prescription for Levaquin for one of her patients because it was not accepted by the patient's insurance. The Complainant further alleges that the PIC failed to fill the prescription with an alternative medicine and failed to contact the patient or the Complainant about other options. The PIC responded that they attempted to fill the prescription for Levaquin through a Grier request; however, it was rejected by the insurance company because it was a nonformulary drug. The insurance company then suggested filling the prescription with Cipro or Avelox as a formulary replacement. The next day, the Complainant phoned in a new prescription that was picked up by the patient.

**Recommendation: Dismissal**

Dr. Robert Shutt motioned to **dismiss** the complaint; seconded by Dr. Alan Corley. All were in favor and the motion carried.

**11. Case No.: L02-PHR-RBS-200210553**

The Complainant alleges that he mistakenly received Carisoprodol 350 mg tablets instead of a refill of Amoxicillin 500 mg tablets. The medicine was prescribed as a dental prophylaxis for his mitral valve prolapse. The Complainant consumed four (4) tablets of the wrong medicine and did not suffer any permanent damage or disabilities. The PIC and verifying DPh stated that the verifying DPh was distracted, which caused the error to occur. The PIC indicated

that pharmacy management is working on verification procedures.

*Previous Complaints:*

*Pharmacy: None*

*PIC: None.*

*DPh: One (1), (3/98, Chemical Dependence)*

**Recommendation: Letter of Warning to the verifying DPh and PIC instructing them to review the pharmacy's verification process and quality assurance program.**

Dr. Alan Corley motioned to **accept counsel's recommendation**; seconded by Dr. Robert Shutt. All were in favor and the motion carried.

**12. Case No.: L02-PHR-RBS-200211032**

This complaint alleges that the Tennessee location of the subject pharmacy provided patient specific and stock bottles of prescription legend drugs to the North Carolina location of the subject pharmacy without a North Carolina license and that non-pharmacist employees dispensed these drugs without any supervision from a licensed pharmacist. There is also an additional allegation that patient counseling was not provided. The PIC responded that he never approved sending bulk drugs to North Carolina; he was however, aware that patient specific drugs were sent there. The records obtained from the Tennessee pharmacy indicate that drugs were shipped to North Carolina from January 1, 2001 through September 13, 2002. The PIC states that he made attempts in writing and by phone to contact the North Carolina Board of Pharmacy to determine the correct procedures for supplying patients in North Carolina with specific medications. When North Carolina never responded, the pharmacy and PIC stopped sending the drugs altogether. The PIC did not address the allegation of the lack of patient counseling.

*Previous Complaints:*

*Pharmacy: None.*

*PIC: None.*

**Recommendation: Letter of Warning to PIC and Consent Order with a civil penalty of \$1,000.00 to pharmacy.**

Dr. Julie Frazier motioned to **accept counsel's recommendation**; seconded by Mrs. Barbara McAndrew. All were in favor and the motion carried.

**13. Case No.: L02-PHR-RBS-200211092**

The Complainant alleges that three (3) area pharmacies are conspiring against her to inform her physicians that she is misusing and abusing drugs. The

Complainant states that she has been taking pain medications, such as Oxycontin, Hydrocodone and Lortab for over seventeen (17) years for her many medical problems. The Complainant further alleges that one of the pharmacists was caught having sex at the pharmacy, but he was not fired and one (1) of the other pharmacist loses refills and puts incorrect dates on the prescriptions. Our investigator contacted the pharmacies named in the complaint as well as six (6) of the pharmacies in the area and examined their records. The investigator found that the Complainant was using six (6) different physicians and obtained prescriptions from seven (7) of the pharmacies that contained opiates.

**Recommendation: Dismissal and refer this matter to each of the Complainant's prescribing physicians.**

Dr. Robert Shutt motioned to **accept counsel's recommendation**; seconded by Dr. Alan Corley. All were in favor and the motion carried.

**14. Case No.: L02-PHR-RBS-20008897**

The Complainant alleges that she received a prescription for Tobramycin instead of Tobradex and that she took the wrong medication; the Complainant received the prescription after her surgery for Bilateral Keratoconus. The Complainant further alleges that as a result of the misfill, she has experienced many complications, such as ptosis, resulting in multiple visits to the doctor, physical therapy, counseling, disfigurement and nerve damage. The PIC responded that the misfill did occur, but that he is unable to determine which pharmacist committed the error. We have no evidence that the error caused the alleged injuries. The Complainant commenced a civil suit as a result of the misfill and alleged damages, but the suit was dismissed because the Complainant failed to produce discovery.

*Previous complaints:*

*PIC: None*

*Pharmacy: None*

**Recommendation: Letter of Warning to the PIC**

Dr. Reggie Dilliard motioned to **accept counsel's recommendation**; seconded by Mrs. Barbara McAndrew. All were in favor and the motion carried.

**15. Case No.: L98-PHR-RBS-9826 (951284)**

The complaint alleges that the pharmacist misfiled a prescription for Mexilitine 150 mg, three (3) times daily with Nortriptyline 75 mg, two (2) capsules three (3) times a day. On the day of the alleged misfill, the patient presented two (2) prescriptions to be filled, one for Nortriptyline and the other was illegible. Dr. Lynch, Dr. Parmley and myself had an informal conference with the Respondent

at which the Respondent personally appeared with his superior. The Respondent stated that since the prescription was illegible, so he called the physician for clarification. He spoke to the nurse at the doctor's office twice. During the first phone call, the nurse told him that the prescription was for Nortriptyline, but the Respondent questioned that since the patient already had a prescription for Nortriptyline. During the second phone call, the nurse told the Respondent that she was going to ask the doctor for clarification and the nurse came back the told the Respondent that the prescription was for Nortriptyline. Respondent still questioned the prescription, but filled it anyway and counseled the patient. The patient consumed the medication and stated that he experienced nausea, hallucinations and sleepiness. There was a civil suit relative to this matter and it was settled for two thousand eight hundred dollars (\$2,800.00).

*Previous complaints:*

*DPh: None*

*Pharmacy: None*

**Recommendation: Letter of Warning.**

Dr. Sheila Mitchell motioned to **dismiss**; seconded by Dr. Robert Shutt. All were in favor and the motion carried.

**16. Case No.: L99-PHR-RBS-199901951**

The complaint alleges that the pharmacist misfiled a prescription while working for a hospital pharmacy; the prescription was written for Trazadone, but the pharmacist gave the patient Tramadol. The Respondent personally appeared for an informal conference with Dr. Lynch, Dr. Parmley and myself. She admitted that the misfill occurred, but that it occurred because she typed in the wrong speed code into the computer. The Respondent typed in "TRA", thinking it was for Trazadone, but instead, it was for Tramadol. She did not discover the error at the time that the prescription was filled because the prescription was checked in another area of the pharmacy where patient counseling was done by another pharmacist. The patient claimed that she consumed the medication and suffered an allergic reaction. A civil action was commenced, which was settled for two thousand dollars (\$2,000.00).

*Previous complaints:*

*DPh: None*

*Pharmacy: None*

**Recommendation: Letter of Instruction**

Dr. Alan Corley motioned to **accept counsel's recommendation**; seconded by Dr. Sheila Mitchell. All were in favor and the motion carried.

**17. Case No.: L99-PHR-RBS-199901332**

The complaint alleges that the pharmacist misfiled a prescription. The prescription was written for DiaBeta, 60 pills, 5mg; however, the pharmacist gave the patient Zebeta, 60 pills, 5mg. The patient realized the error before the patient consumed any of the wrong medication. The patient brought the medication back to the pharmacy; she was then refunded her money and she received the correct medication. The Respondent attended an informal conference with Dr. Lynch, Dr. Parmley and myself with the pharmacy lawyer. The Respondent admitted that the misfill occurred and informed us that the pharmacy has taken measures to prevent future misfills by placing bar codes on the bottles and the labels. Once the bar codes are scanned to see that they are the same, then the technician initials it and it goes to the pharmacist.

*Previous complaints:*

*DPh: None*

*Pharmacy: None*

**Recommendation: Letter of Warning**

Dr. Alan Corley motioned to **issue a Letter of Instruction**; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

**18. Case No.: L00-PHR-RBS-200002471**

The complaint alleges that pharmacist violated the pharmacy technician rule in that there was one (1) pharmacist on duty to supervise two (2) interns and three (3) technicians. Only one of the interns and none of the technicians had name tags. The Respondent personally appeared for an informal conference with Dr. Lynch, Dr. Parmley and myself, at which time the Respondent admitted that there was a pharmacist to pharmacy technician ratio imbalance for approximately thirty (30) minutes when the Respondent left the pharmacy. This is the fourth time that this matter has come before the Board. Previously, the Board voted to send the pharmacist a Consent Order with a civil penalty of five hundred and fifty dollars (\$550.00) for violations of the pharmacy technician rule and failing to ensure that the technicians were wearing name tags.

*Previous complaints:*

*DPh: None*

*Pharmacy: None*

**Recommendation: Consent Order with a civil penalty of \$200.00 for failure to have the technicians wear name tags.**

Dr. Sheila Mitchell motioned to **accept counsel's recommendation**; seconded

by Dr. Alan Corley. Mrs. Barbara McAndrew voted “no”. The motion carried.

**19. Case No.: L02-PHR-RBS-200101207**

The Complainant, the child of the patient, alleges that the pharmacist misfiled the patient’s prescription and that this is the third time that it has occurred. The Complainant does not state which specific drug was misfiled when the first misfill allegedly occurred. The Complainant alleges that in the second misfill, the pharmacy gave her the wrong kidney medication; the third time, the pharmacy gave her the wrong insulin and this most recent time, the pharmacy gave her 100 mg of Amitriptyline, instead of 10 mg. The patient did not consume the wrong dosage of Amitriptyline. We do not know if all of the alleged misfills were done by the same pharmacist. We sent the pharmacist a copy of the complaint by certified mail, return receipt requested. The pharmacist received the letter on March 23, 2001; however, there was no response. The then personally served the pharmacist with a copy of the complaint on November 6, 2002; however, we still have not received a response.

**Recommendation: Informal Conference**

Dr. Reggie Dilliard motioned to **accept counsel’s recommendation**; seconded by Dr. Sheila Mitchell. All were in favor and the motion carried.

**20. Case Nos.: L98-PH-RBS-9810 (951283) and L99-PHR-RBS-1999014651**

One complaint alleges that he was told by the pharmacist that he already picked up his prescriptions (seven (7) of them), when the complainant alleges that he did not. The Complainant alleges that he dropped off prescriptions for Oxyadrin, Tetracycline, Zoloft, Criaivan, Zerit, Epiviz and a multivitamin. The Complainant does not state how or when he received his medicine. The second complaint alleges that when the complainant went to pick up his prescription for Glucophage and APAP #4, he was told by the pharmacist that he has already picked it up at another branch of that chain. The Complainant checked with that other branch of the store and he discovered that another man picked up his prescription by stating that he was the Complainant. Both complaints were hand-delivered to the pharmacist; however, we have not received a response back yet.

**Recommendation: Informal Conference**

Dr. Alan Corley motioned to **accept counsel’s recommendation**; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

**21. Case No.: L02-PHR-RBS-200207750**

The pharmacist entered a Consent Order to reinstate his license on June 11, 2000 with a five (5) year term of probation and the typical terms and conditions of

the Board's order for reinstatement when the pharmacist's license was revoked because of chemical dependency. On March, 2002, the pharmacist personally appeared before the Board to request a modification of his reinstatement order so that he could stop attending TPRN and his AA and NA meetings. The Board did reinstate the pharmacist's PIC privileges; however, the Board refused to change the meeting requirements. Four (4) months after the pharmacist's personal appearance before the Board, TPRN terminated its advocacy contract with the pharmacist because he had a positive urine screen and he was missing his required meetings.

**Recommendation: Formal Hearing**

Dr. Reggie Dilliard motioned to **accept counsel's recommendation**; seconded by Dr. Robert Shutt. All were in favor and the motion carried.

**22. Case No.: L97-PHR-RBS-8366 (947295)**

In January of 2002, the pharmacist signed a Consent Order for the Reinstatement of her license, which contained a five (5) year probation term with the typical terms and conditions that are contained in the Board's orders for reinstatement when a pharmacist's license was revoked because of chemical dependency. Subsequent to the pharmacist signing this Consent Order, the pharmacist has violated this order by: (a). consuming medications prescribed by someone other than the primary physician, (b). failing to report to the Board that she ingested a drug and (c). having her TPRN advocacy revoked.

**Recommendation: Formal Hearing (Consent Order for the revocation of her license)**

Dr. Sheila Mitchell motioned to **issue a Consent Order for the Revocation of License**; seconded by Dr. Alan Corley. All were in favor and the motion carried.

**DIRECTOR'S REPORT**

**NATIONAL ASSOCIATION OF BOARDS OF PHARMACY**

Resolution No. 98-2-02	Support for Legislation Supporting Pharmacist Education
98-4-02	Support for Legislation Recognizing Pharmacists as Health Care Providers

The above referenced resolutions were passed at NABP's 98<sup>th</sup> Annual Meeting in Phoenix, Arizona.



### **NABP – FPGEE ADMINISTRATION**

The examination for foreign graduates was halted as of November 19, 2002, due to a security breach. A paper and pencil test will be introduced in June, 2003.

### **NABP – FPGEC CERTIFICATION PROGRAM APPLICATION PROCESSING**

The National Association of Board of Pharmacy will continue to accept applications to the Foreign Pharmacy Graduate Examination Committee until the examination can resume in June, 2003.

### **U. T. COLLEGE OF PHARMACY 26<sup>th</sup> ANNUAL PHARMACY UPDATE 2003**

February 15 – 16, 2003	Cookeville	Julie Frazier
March 1 – 2, 2003	Chattanooga	Forrest Parmley
March 8 – 9, 2003	Johnson City	Alan Corley
March 15 – 16, 2003	Memphis	Reggie Dilliard
March 22 – 23, 2003	Knoxville	Barbara McAndrew
April 5 – 6, 2003	Nashville	Julie Frazier

### **UNITED STATES DEPARTMENT OF JUSTICE DRUG ENFORCEMENT ADMINISTRATION**

600 Army Navy Drive  
Arlington, VA 22202

Director Kendall Lynch received notification from Chief Patricia Good, dated January 2, 2003 of DEA's approval of the Guidelines for Emergency Kits in Long Term Care Facilities.

### **CONTROLLED SUBSTANCE MONITORING**

Director Kendall Lynch stated the implementation of the controlled substance monitoring would be dependent upon the rules.

## **TECHNICIAN REGISTRATION**

The technician registration packets are currently being mailed to the pharmacy central offices and distributed alphabetically by county.

## **URINE SCREENS**

Dr. Kendall Lynch noted that the TBI urine screens are now being analyzed more timely.

## **POSSIBLE LEGISLATION TO BE INTRODUCED**

Dr. Lynch stated possible legislation for 2003 could include the licensing of Pharmacy Benefit Managers.

## **ADJOURNMENT**

Dr. Alan Corley motioned to adjourn the Board of Pharmacy meeting on Tuesday, January 21, 2003 at 4:25 p.m. CST; seconded by Dr. Sheila Mitchell. All were in favor and the motion carried.

## **RECONVENED**

The Board of Pharmacy reconvened on Wednesday, January 22, 2003, at 9:00 a.m. CST in Room 160 of the Davy Crockett Tower. President Forrest Parmley called the meeting to order. All members were present.

## **LISA WAKEFIELD, DPH – INFORMAL CONFERENCE COVINGTON, TN**

Dr. Lisa Wakefield appeared before the Board for an Informal Conference along

with advocates, Dr. Barry Ferguson and Dr. Steve Jones. Director Kendall Lynch stated the Board received information from Dr. Wakefield's employer that she had been consuming alcohol while at work. Dr. Wakefield admitted to pharmacist investigator, Dr. John Beauregard that she had been drinking on the job. Dr. Wakefield went to Charter Lakeside for an evaluation and was admitted. Since there was no theft or loss of drugs at the pharmacy, the Board did not go through the normal process. Dr. Wakefield surrendered her license. Legal counsel, Ms. Alison Zane advised Dr. Wakefield that if no conclusion is reached, then she could proceed with a formal hearing. There will be no penalty assessed. Dr. Wakefield has completed the aftercare contract requirements. Dr. Steve Jones stated the treatment center gave Dr. Wakefield high recommendations.

After board discussion, Dr. Robert Shutt motioned:

1. Respondent does hereby agree to the reinstatement of license number **#6530** with the following probationary conditions. Said probation shall remain in effect for a period of five (5) years:

- (a) The Respondent shall completely abstain from the consumption of alcohol and controlled substances, except as prescribed by a duly licensed practitioner for a legitimate purpose.

- (b) The Respondent shall consume no medications unless they are prescribed by his primary physician, Keith Anderson, MD. The Respondent shall

immediately notify the Board office of the name of his primary physician each time the Respondent changes primary physicians.

(c) The Respondent shall destroy any unused controlled substances prescribed under the provisions of subsection (b) no later than thirty (30) days following the completion of the prescribed course of treatment.

(d) The Respondent shall report to the Board, in writing, the ingestion of any and all legend drugs or controlled substances (a copy of the prescription will satisfy the requirement).

(e) The Respondent shall be subject to perpetual, random sampling of urine, blood or bodily tissues, at his own expense, by agents of the Board.

(f) Should any sampling indicate the presence of drugs for which the Respondent does not have a valid prescription, a show cause order will be issued to determine why the probation and the Respondent's license should not be immediately revoked.

(g) The Respondent shall comply with all the terms and conditions of the extended aftercare contract he entered into with Tennessee Pharmacist Recovery Network. Respondent shall return a copy of said contract with this Consent Order to the Board office.

(h) The Respondent will not serve as pharmacist in charge for a period of three (3) years, however, after a period of two (2) years, may petition the

Board for a modification of this Order to remove the restrictions upon a show of good cause.

Dr. Julie Frazier seconded the motion. Dr. Reggie Dilliard recused himself. The motion carried.

**MIKE ROGAN, DPH – REQUEST FOR REINSTATEMENT OF LICENSE  
ROGERSVILLE, TN**

Dr. Mike Rogan appeared before the Board along with attorney, Walter Fitzgerald. Director Kendall Lynch stated the Board agreed to accept a Consent Order for the voluntary surrender of Dr. Rogan's pharmacist license at the May 2001 board meeting. Dr. Rogan entered into a Memorandum of Understanding for certain offenses in Criminal Court of Hawkins County, was placed on two years probation with the stipulation that he surrender his pharmacist license. The Consent Order stated Dr. Rogan's license be voluntarily surrendered for two years and also stated the Respondent shall be allowed to appear before the Board to petition for reinstatement of his license immediately preceding the surrender of his license, the effective date being February 16, 2001. Dr. Walter Fitzgerald stated Dr. Rogan has met the terms of his criminal probation and has complied with all the requirements from the Board. After board discussion, Dr. Robert Shutt motioned:

1. Respondent does hereby agree to the reinstatement of license number **#5043**

**effective February 16, 2003, the date the record is expunged**, with the following probationary conditions. Said probation shall remain in effect for a period of five (5) years:

(a) The Respondent shall completely abstain from the consumption of alcohol and controlled substances, except as prescribed by a duly licensed practitioner for a legitimate purpose.

(b) The Respondent shall consume no medications unless they are

prescribed by his primary physician. The Respondent shall immediately notify the Board office of the name of his primary physician each time the Respondent changes primary physicians.

(c) The Respondent shall destroy any unused controlled substances prescribed under the provisions of subsection (b) no later than thirty (30) days following the completion of the prescribed course of treatment.

(d) The Respondent shall report to the Board, in writing, the ingestion of any and all legend drugs or controlled substances (a copy of the prescription will satisfy the requirement).

(e) The Respondent shall be subject to perpetual, random sampling of urine, blood or bodily tissues, at his own expense, by agents of the Board.

(f) Should any sampling indicate the presence of drugs for which the Respondent does not have a valid prescription, a show cause order will be issued to determine why the probation and the Respondent's license should not be immediately revoked.

(h) The Respondent will not serve as pharmacist in charge for a period of three (3) years, however, after a period of two (2) years, may petition the Board for a modification of this Order to remove the restrictions upon a show of good cause.(i)

If the license has been inactive, delinquent, suspended or revoked:

②One (1) year to not more than five (5) consecutive years, the

pharmacist shall:

1. Provide written notice requesting an active license.
2. Satisfy all past due continuing pharmaceutical education.
3. Successfully complete the jurisprudence examination.
4. Pay all cumulative license renewal fees and any applicable penalties.
5. Complete a period of pharmacy internship in Tennessee:
  - (i) From one (1) year to not more than three (3) consecutive years, one hundred sixty (160) hours within ninety (90) consecutive days.

Mrs. Barbara McAndrew seconded the motion. Dr. Alan Corley recused from voting. The motion carried. Dr. Walter Fitzgerald is to furnish expunge date and primary physician.

#### **PHARMACY BENEFIT MANAGERS**

Director Kendall Lynch stated a Resolution to license PBM's will be presented at the TPA Midyear Meeting in February, 2003.

#### **EXCELLERX**

2525 Horizon Lake Drive #101  
Memphis, TN 38133

Director Kendall Lynch has arranged a meeting with Dr. Bill Falbe at Veteran's Administration for Dr. Julie Frazier and Dr. Forrest Parmley to visit and observe the ADDS system.

### **CANADIAN PHARMACIES**

Director Lynch advised the Board that a Cease and Desist letter was mailed to Canadian pharmacies shipping into Tennessee.

### **PRESCRIPTIONONLINE.COM**

Director Kendall Lynch stated PrescriptionOnLine.com is now out of business with the assistance of the Nevada Board of Pharmacy.

### **MARTHA HOGUE – BOARD OF PHARMACY EMPLOYEE**

Dr. Kendall Lynch advised the board that Ms. Martha Hogue will be returning to work on February 1, 2003 from medical leave. Welcome home!

### **ADJOURNMENT**

Dr. Robert Shutt motioned to adjourn the Board of Pharmacy meeting on Wednesday, January 22, 2003 at 11:30 a.m. CST; seconded by Dr. Sheila Mitchell. All were in favor and the motion carried.

Respectfully submitted,

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Forrest Parmley, President

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Kendall M. Lynch, Director